

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Low-Volume Long Distance Users)	CC Docket No. <u>99-249</u>
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
_____)	

**COMMENTS OF ONCOR COMMUNICATIONS, INC. ON NOTICE OF PROPOSED
RULEMAKING AND REQUEST FOR CLARIFICATION**

Operator Communications, Inc. d/b/a Oncor Communications, Inc. ("OCI"), by its attorneys, hereby submits its comments on the Notice of Proposed Rulemaking¹ on a proposal submitted to the Commission by the Coalition for Affordable Local and Long Distance Service ("CALLS"),² hereinafter, "the CALLS Proposal." OCI agrees that the CALLS Proposal, if implemented properly, could achieve important public interest objectives. Accordingly, it conditionally supports the CALLS Proposal, subject to the important clarification that payphone lines are to be treated as single-line business lines for purposes of the Primary Interexchange Carrier charge ("PICC charge") under the Proposal.

¹ Access Charge Reform, et al., FCC 99-235 (rel. Sept. 15, 1999) (hereinafter, "NPRM" or "Notice").

² The members of CALLS are AT&T, Bell Atlantic, BellSouth, GTE, Sprint, and SBC. Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan, filed August 20, 1999, attached to the CALLS Proposal as Appendix A.

INTRODUCTION

OCI provides operator-assisted (i.e., 0+) calling services from public payphones throughout the United States. In these comments, OCI will discuss that portion of the CALLS Proposal that addresses common line charges assessed by local exchange carriers ("LECs") and seeks to clarify that PICC charges, if applicable to payphones at all, are only applicable to payphone lines at the single-line business line rate. In general, OCI supports the CALLS Proposal as being consistent with the Commission's policy objectives, such as promoting local service competition and eliminating implicit universal service subsidies from access charges. However, OCI's support is strictly conditioned on receiving a clarification from the Commission in this proceeding that payphone lines constitute single-line business lines for purposes of calculating PICC charges.

On July 29, 1999, CALLS submitted a proposal to the Commission that presented substantial revisions to the current system of access charges and universal service funding. The CALLS Proposal suggests three areas for reform: (1) combining existing carrier common line and subscriber line charges into one flat rate subscriber line charge; (2) funding portable universal service support with explicit charges; and (3) establishing a plan whereby traffic-sensitive switched access rates are reduced over time and then stabilized.³ OCI's comments focus on the first area of reform – revising the present system of common line charges. The CALLS Proposal provides that the residential and single-line business line end user common line charge (also known as the subscriber line charge ("SLC")) and PICC charge will be combined into a single end user charge. In contrast, under the proposal, the multiline business line SLC

³ See Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan, at 8-10, August 20, 1999.

charge would be assessed on the end user, while the multiline business line PICC charge would continue to be charged to the presubscribed interexchange carrier ("IXC").⁴

The CALLS Proposal does not address whether payphone lines would be considered single-line or multiline business lines for purposes of calculating and assessing PICC charges. Currently, most LEC access tariffs treat payphone lines as multiline business lines for PICC charge purposes, notwithstanding the absence of any Commission requirement or statement that such treatment is either required or appropriate. The questionable lawfulness of the LECs' tariffs in that respect forms the basis of a matter that has been in dispute before the Commission for more than one and one-half years. Although the Commission released a Public Notice on these issues on May 4, 1998, requested public comment, and received numerous comments, the Commission has not yet resolved any issues related to the assessment of PICC charges on payphone lines.⁵ OCI understands that no decision will be forthcoming from the Commission on these issues in the absence of a formal rulemaking proceeding. The present rulemaking proceeding is an appropriate forum for clarifying how payphone lines should be treated when assessing PICC charges because the proposal urges significant revisions to the manner in which LECs can recover common line costs, including PICC charges, from end users and IXCs.

⁴ CALLS Proposal, ¶¶ 2, 2.1.2, 2.1.4.

⁵ Public Notice - Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, 13 FCC Rcd 9333 (rel. May 4, 1998) ("May 1998 Public Notice").

As OCI has indicated previously, there are sound reasons why PICC charges should not be assessed on payphone lines,⁶ and if they are to be assessed on payphone lines, they should be imputed to the payphone provider.⁷ However, if PICC charges are to be applicable to payphone lines, the charges should be assessed at the single-line business line rate and included in the combined SLC contemplated by the CALLS Proposal like all other charges assessed on single-line business lines. With such a clarification, OCI is supportive of the CALLS Proposal and urges the Commission to adopt the proposal in its entirety. The clarification sought by OCI is supported by the Commission's rules and orders, is consistent with the Commission's policies of promoting competitive and affordable services and placing the burden of costs on those responsible for causing the costs, and would have minimal impact on LECs.⁸

⁶ OCI has asserted that payphone lines should be exempt from PICC charges at any rate. In various pleadings, OCI has stated that: (1) the Commission's rules and orders concerning PICC charges do not provide any support for assessing PICC charges on payphone lines in general or on presubscribed 0+ carriers, in particular; (2) the imposition of PICC charges on payphone lines will impede the development of competition in the important public communications segment and reduce the availability of public telephones at many locations; and (3) the Commission policy of assessing charges in a cost-causative manner dictates that payphone providers, and not presubscribed IXC's, should pay PICC charges because the payphone providers cause LECs to incur the cost of providing an access line to connect the payphone to the public switched network. See Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, CCB/CPD No. 98-34, Comments of Oncor Communications, Inc., May 26, 1998 and Motion for Interim Relief, June 15, 1999; 1999 Price Cap Revisions, Petition to Reject or Suspend Access Tariff Provisions, June 23, 1999.

⁷ See Comments in response to May 1998 Public Notice, CCB/CPD Docket No. 98-34, May 26, 1998 - AMNEX Comments, at 2; MCI Comments, at 6-9; Comments of Oncor Communications, Inc., at 8-10; Comments of One Call Communications, Inc., at 4-5.

⁸ See Access Charge Reform, *First Report and Order*, 12 FCC Rcd 15982, ¶¶ 104-05 (1997) ("Access Charge Reform Order").

COMMENTS

I. Payphone Lines Should be Considered Single-Line Business Lines For Purposes of Assessing PICC Charges.

As a preliminary matter, OCI disputes whether payphone lines should be classified as business lines at all, given that payphone lines are not used by subscribers for the conduct of their business. For example, the owner of a restaurant that has a payphone on the premises for the convenience of its guests, does not utilize the payphone to take reservations, communicate with employees, or to place orders with suppliers. Instead, payphone lines serve the general public, and therefore, are used by transient, casual callers that have no connection with the premises owner or its business other than possibly being available to employees and guests of the business for their personal use. Many payphones are not even located at business establishments. For example, payphones are often located at apartment complexes or at schools, parks, churches or other non-mercantile premises. Nevertheless, under the Commission rule permitting LECs to assess PICC charges, the amount of the PICC charge per subscriber line is a function of whether a line is a single-line or multiline business line.⁹ The Commission has not addressed whether payphone lines should be considered single-line business lines or multiline business lines for purposes of assessing PICC charges. There is no definition of multiline business lines in any Commission rule or order. Similarly, the CALLS Proposal fails to indicate how payphone lines would be treated under the proposed reform of common line charges.

The characteristics of payphone lines indicate that, if they are business lines at all, they more closely resemble single-line business lines, than multiline business lines. Each payphone is an independent facility with a separate dedicated line. A payphone transmits and receives calls via a single line that has a unique automatic number identification code, which is used to execute

⁹ 47 C.F.R. § 69.153.

service orders and to generate bills for premises owners. Unlike multiline business lines, a payphone line does not have direct inward dialing capability and a payphone line is often the only telephone line at a particular location. Indeed, many of the payphones served by OCI are the only payphones found at a particular premises, e.g., gas stations, restaurants, taverns, campgrounds, and other similar locations. Thus, many payphone lines are not even located at places where multiple business lines are present. Indeed, the Michigan Public Service Commission (“PSC”), the only state commission to directly address whether payphone lines should be subject to PICC charges at the multiline business line rate, has held that “payphones should be assessed [the intrastate PICC charge] at the less expensive single-line business rate.”¹⁰ The Michigan PSC explained that “each payphone (1) has a separate phone number, (2) constitutes a stand-alone installation designed to serve a single, specific site, (3) is assigned a unique automatic number identification code for billing purposes, and (4) may have a different billing cycle than other payphones operated by the same entity.”¹¹ Given that a payphone line does not resemble a multiline business line in any way, it should be treated as a single-line business for purposes of assessing PICC charges under the CALLS Proposal.

II. If PICC Charges are to be Applicable to Payphone Lines, Then Treating Such Lines as Single-Line Business Lines under the CALLS Proposal Promotes the Commission’s Policies.

The CALLS Proposal, which would assess the PICC charge for single-line business lines on the end user as part of a single subscriber line charge, comports with the principle of cost

¹⁰ AT&T Communications of Michigan, Inc. against Ameritech Michigan, Case No. U-11660, 1998 Mich. PSC LEXIS 279, at *50-51 (Oct. 26, 1998).

¹¹ Id. The Michigan PSC further held that PICC charges should only be assessed against the presubscribed 1+ carrier for all payphone lines. Id. at *50.

causation long embraced by the Commission.¹² In the Access Charge Reform Order, the Commission declared that the PICC charge is “a flat-rated charge that recovers costs in a cost-causative manner.”¹³ In the case of payphones installed by payphone providers on their own initiative, the payphone provider, whether a LEC payphone division or an independent payphone provider, causes the LEC to incur the cost of providing and maintaining the access line to connect the payphone to the public switched network. When a premises owner requests a payphone provider to install a payphone, that owner, not the presubscribed IXC, causes the LEC to incur the cost of providing an access line. The presubscribed 0+ carrier at a payphone does not request a local access line and does not connect the payphone to that line. Moreover, the presubscribed 0+ carrier at a payphone, unlike the presubscribed IXC at residential and business telephones, does not receive virtually all of the interexchange traffic from a particular payphone. In fact, many of the payphones at which OCI is the 0+ carrier, generate few, if any, 0+ calls per month. Therefore, the presubscribed 0+ carrier’s use of the local access lines associated with any particular payphone represents only a small portion of the total use of those lines as a result of local and long distance calls placed from that payphone. Treating payphone lines as single-line business lines under the CALLS Proposal, and thereby imposing PICC charges on payphone customers, *i.e.*, payphone providers, is consistent with the intent of the Commission to burden the entities responsible for costs with the payment of those costs.

The CALLS Proposal, with the clarification that payphone lines are to be treated as single-line business lines, also fosters the Commission’s goals of providing competitive and

¹² In the payphone context, the payphone provider or premises owner is considered to be the customer of payphone service. *See, e.g., United States v. Western Elec. Co.*, 698 F. Supp. 348 (D.D.C. 1988).

¹³ Access Charge Reform Order, ¶ 104.

affordable service by excluding presubscribed 0+ carriers, and ultimately users, of their services from charges for which they derive no benefit. Requiring presubscribed carriers serving payphones to pay the PICC charge directly would impede competition in the public communications market segment and reduce the availability of payphones at many locations. At this time, 0+ carriers at payphones, such as OCI, are experiencing substantial declines in traffic volumes and revenues.¹⁴ In the case of OCI, approximately 45.9 percent of the payphones for which OCI is the presubscribed carrier do not generate sufficient revenue from interstate calls to even recover the current multiline business line PICC charges. The imposition of the PICC charge on 0+ carriers, especially at the multiline business line rate, will cause many 0+ carriers to cease providing service, thereby decreasing availability of 0+ services at public locations, and, for that matter, will decrease the availability of payphones themselves. Many payphones which will be taken out of service for economic reasons related to the charges are located in rural areas, or in urban areas with low-income consumers. Therefore, imposition of PICC charges on 0+ carriers also hinders the statutory policy of universal service, which is based on the principle that all consumers, “including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and informational services . . . that are reasonably comparable to those provided in urban areas.”¹⁵

Furthermore, presubscribed 0+ carriers serving payphones, unlike presubscribed 1+ carriers for residential and business end users, do not receive substantial benefits from being a

¹⁴ These declines primarily result from three causes: (1) a dramatic increase in “dial around” calling through the use of 1-800 and other access codes; (2) the growth of the prepaid calling card industry segment; and (3) wide usage of cellular, PCS, and other wireless services in lieu of wireline payphone calling.

¹⁵ 47 U.S.C. § 254; see also Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 1 (1997).

presubscribed carrier because “dial around” calling occurs so frequently at payphones. Presubscribed 0+ carriers handle only a small – and declining – portion of the total interexchange traffic originated from payphones, and therefore, receive only a fraction of the revenues generated by payphones. Although 0+ carriers could pass the PICC charge onto consumers by increasing rates to consumers or assessing a surcharge on each 0+ call, such increases would make 0+ service too expensive for many consumers. Given the low number of calls that presubscribed 0+ carriers now handle from payphones, and thus the low amount of revenue generated from the payphones, carriers serving those phones would have to increase their rates merely to recover the PICC charges, and particularly PICC charges at the multiline business line rate. Increasing the rates to consumers is patently unfair because the few consumers placing calls from payphones would be subsidizing the majority of the IXC customers from those payphones – those who do not make 0+ calls. Therefore, assuming that payphone lines are considered single-line business lines, the CALLS Proposal promotes several Commission policies by requiring common line costs to be assigned to the entity causing those costs and by facilitating affordable and available payphone service to all telecommunications consumers.

Finally, the financial impact on LECs if payphone lines are treated as single-line business lines would be insignificant. The Commission’s most recent statistics indicate that payphone lines comprise less than one percent of all switched access lines in the United States.¹⁶ Based on the LECs’ most recently filed access tariffs, if LECs collect PICC charges at the single-line business line rate instead of the multiline business line rate, LECs, as a whole, will incur a negative adjustment to annual revenue of less than one-third of one percent. In fact, no individual LEC will experience a negative adjustment to annual revenue of more than one

¹⁶ Preliminary Statistics of Communication Common Carriers, Federal Communications Commission, May 1999, at 24.

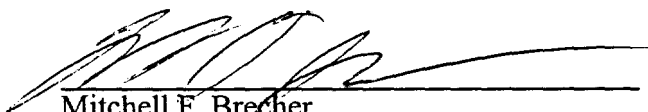
percent.¹⁷ In addition to PICC charges, payphones also provide other revenue sources to LECs. LECs receive usage-based charges on every interexchange call originated or terminated at LEC-owned payphones and receive service revenues from premises owners. Therefore, treating payphone lines as single-line business lines will have a negligible effect on LECs.

CONCLUSION

For all of the foregoing reasons, OCI supports adoption of the CALLS Proposal with the important clarification that PICC charges will be assessed on payphone lines at the single-line business rate, and included in the SLC.

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, Inc.



Mitchell F. Brecher
Debra A. McGuire
GREENBERG TRAURIG
1300 Connecticut Avenue, NW
Washington, DC 20036
(202) 331-3100

Its Attorneys

November 12, 1999

¹⁷ Id. at Table 2.9, line 156.

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, certify that on the 12th day of November, 1999, I have caused to be served by hand delivery, a true copy of the foregoing COMMENTS OF ONCOR COMMUNICATIONS, INC. ON NOTICE OF PROPOSED RULEMAKING AND REQUEST FOR CLARIFICATION to the following:

Wanda Harris
Common Carrier Bureau
Competitive Pricing Division
The Portals, Room 5-A207
445 Twelfth Street, S.W.,
Washington, D.C. 20554

Honorable Harold Furchtgott-Roth Commissioner
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 8-A302
Washington, D.C. 20554

International Transcription Service, Inc.
The Portals
Room CY-B400
445 Twelfth Street, S.W.
Washington, D.C. 20554

Honorable Michael K. Powell Commissioner
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 8-A204
Washington, D.C. 20554


Honorable William E. Kennard, Chairman
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 8-B201
Washington, D.C. 20554

Honorable Gloria Tristani, Commissioner
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 8-A302
Washington, D.C. 20554

Honorable Susan Ness Commissioner
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 8-B115
Washington, D.C. 20554

Jane E. Jackson
Chief, Competitive Pricing Division
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., 5-A207
Washington, D.C. 20554

Lawrence E. Stricking
Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 5-B303
Washington, D.C. 20554



Melodie Kate